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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SOPHIA & CHLOE, INC., a California Corporation,

CASE NO. 12cv2472-AJB(KSC)

vs. Plaintiff,

**ORDER DETERMINING
DISCOVERY DISPUTE**

BRIGHTON COLLECTIBLES, INC.,
a California Corporation,

[Doc. Nos. 31, 32]

Defendant.

Before the Court is the parties' dispute regarding plaintiff's request for forensic examinations of computers used by certain defense representatives. [Doc. Nos. 31, 32] For the reasons outlined in greater detail below, plaintiff's request [Doc. No. 31] is **DENIED without prejudice.**

I. BACKGROUND

This case involves a dispute over competing lines of Moroccan-inspired jewelry. [See Doc. No. 1, Complaint] The action is brought by jewelry designer Sophia & Chloe against Brighton Collectibles, designer and manufacturer of women's accessories, including jewelry. *Id.* at 2. Plaintiff Sophia & Chloe alleges copyright infringement, trademark infringement, and unfair competition pursuant to the Copyright Act 17 U.S.C. §§ 501, *et seq.*, the Lanham Act 15 U.S.C. § 1125(a), California Business and Professions Code §§ 17200, *et seq.* and § 17500, and California common law principles.

1 principles. Plaintiff contends that defendant's "Toledo" line of accessories infringes
 2 on and unfairly competes with plaintiff's "Kiss" collection. *Id.*

3 On August 15, 2013, plaintiff filed the Motion presently before the Court. [Doc.
 4 No. 31] Plaintiff seeks an Order authorizing it to conduct forensic examinations of the
 5 computers used by the two individuals identified by defendant as those responsible for
 6 creating and authorizing its Toledo collection. The stated purpose of the forensic
 7 examinations is to ascertain if any internet history or internal communications exist or
 8 are otherwise recoverable that relate to the creation of the Toledo line or plaintiff's
 9 Kiss collection. Plaintiff argues that defendant has produced no internal
 10 communications regarding defendant's Toledo collection. [Doc. No. 31, p. 1] While
 11 plaintiff originally suspected that this lack of production was an oversight, after the
 12 parties met and conferred, defendant confirmed that it had searched for the sought after
 13 communications and found none. *Id.* Plaintiff proposed for the individuals identified
 14 by defendant who were responsible for the design and approval of the Toledo
 15 collection, Brighton CEO Jerry Kohl and Brighton designer Kim Cruser-Scott, each
 16 sign a declaration stating that no such communications exist. When defendant refused,
 17 plaintiff proposed forensic examinations of the computers used by Mr. Kohl and Ms.
 18 Cruser-Scott.

19 On August 23, 2013, defendant filed its Opposition¹ to plaintiff's Motion to
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21 ¹ The Chamber Rules of the undersigned Magistrate Judge require parties to engage in
 22 meaningful meet and confer discussions before bringing disputes to the attention of the Court.
 23 Crawford Chamber Rule V.(B). The parties are expected to comply with this requirement, which is
 24 also mandated in the Local Rules for the U.S. District Court for the Southern District of California.
 25 L.Civ.R.26.1a. Discovery disputes must be presented to the Court in Joint Motion format. Crawford
 26 Chamber Rule V.(D). The Joint Motion obligation is mandated by the rules of this Court and as such
 the Court will normally refuse to adjudicate discovery disputes where the parties have not submitted
 the dispute in Joint Motion format, with limited exceptions. *Id.*; L.Civ.R 26.1e. "This Court considers
 a minimum of 5 business days prior to the anticipated filing date of the joint motion to be a reasonable
 time period for a party to participate meaningfully in the preparation of the joint motion." Crawford
 Chamber Rule V.(D)(4).

27 It is unclear why this dispute was not filed as a Joint Motion. [Doc. No. 31-1, Exhs. J, K] Defendant
 28 argues that the "drafts [of the Joint Motion] were ever changing," that "[Judge Crawford] does not state
 that 5 business days is the maximum time period that the opposing party should be given," and that,

1 Compel Forensic Computer Inspection. [Doc. No. 32] Defendant objects to the proposed
 2 computer examinations on grounds that the requested relief is based on speculation,
 3 seeks information not relevant to this action, and is unreasonably intrusive. Specifically,
 4 defendant argues that the lack of internal communication regarding its own Toledo line
 5 is not surprising given that “Brighton designers sketch their designs with pencil on
 6 paper.” [Doc. No. 32, p. 7] As further explained, “[the designers] do not create their
 7 designs digitally. They do not routinely email each other or others at Brighton about the
 8 creation of their designs.” *Id.* Given the age of the internet search histories requested
 9 by plaintiff, defendant asserts that the “non-existence of those histories is not all that
 10 surprising considering their ephemeral nature.” [Doc. No. 32, p. 4] Regarding its refusal
 11 to provide declarations on these topics, defendant argues that “(a) there is no such
 12 requirement under the Federal Rules, and (b) [plaintiff] had already noticed depositions
 13 at which the relevant [defense] representatives would give live testimony under oath on
 14 these same subjects anyway.” [Doc. No. 32, p. 10] Lastly, defendant claims that
 15 plaintiff’s request is untimely under both the Chamber Rules of the undersigned
 16 Magistrate Judge, as well as the operative Scheduling Order [Doc. No. 30] in this action.

17 **II. DISCUSSION**

18 The scope of discovery under Rule 26(b) is broad: “[p]arties may obtain discovery
 19 regarding any matter, not privileged, which is relevant to the claim or defense of any
 20 party involved in the pending action. Relevant information need not be admissible at trial
 21 if the discovery appears reasonably calculated to lead to the discovery of admissible
 22 evidence.” FED.R.CIV.P. 26(b). However, a court may limit discovery of relevant
 23 material if it determines that the discovery sought is unreasonably cumulative or
 24 duplicative, or obtainable from some other source that is more convenient, less
 25 burdensome, or less expensive, or the burden or expense of responding to the proposed

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 27 on August 8, 2013, and filed its *ex parte* Motion on August 15, 2013. [Doc. No. 31-1 at ¶11,
 28 Declaration of C. Carll] Based on these facts, it appears plaintiff provided defendant with a reasonable
 opportunity to participate. In the future, should defendant refuse to participate in the joint filing of
 disputes absent good cause, defendant risks forfeiting its positions or arguments.

discovery outweighs the likely benefit. FED.R.CIV.P. 26(b)(2)(C)(i)-(iii). The party resisting discovery generally bears the burden of showing that the discovery requested is irrelevant to the issues in the case or is overly broad, unduly burdensome, unreasonable, or oppressive. *Henderson v. Holiday CVS, L.L.C.*, 269 F.R.D. 682, 686 (S.D. Fla. 2010). If the resisting party meets its burden, the burden shifts to the moving party to show the information is relevant and necessary. *Id.*

The Court finds that defendant has sufficiently met its burden as the party resisting plaintiff's proposed discovery. Given the legitimate privacy and other interests at issue, absent "specific, concrete evidence of concealment or destruction of evidence," courts are generally cautious about granting a request for a forensic examination of an adversary's computer. *Advante Int'l Corp. v. Mintel Learning Technology*, 2006 WL 1806151 at *2 (N.D. Cal. June 29, 2006); *John B. v. Goetz*, 531 F.3d 448, 460 (6th Cir. 2008). While this Court acknowledges plaintiff's suspicion that it is "implausible" that nobody within defendant's organization sent or received a single e-mail regarding the design or creation of the Toledo collection, "mere skepticism that an opposing party has not produced all relevant information is not sufficient to warrant drastic electronic discovery measures." *John B.*, 531 F.3d at 460 (citing *McCurdy Group, LLC v. Am. Biomedical Group, Inc.*, 9 Fed. Appx. 822, 831 (10th Cir. 2001)). Given plaintiff's ability to explore these topics through other written and oral discovery tools, the burden and expense of forensic examinations at this discovery stage is unwarranted.² Accordingly, and absent more specific, concrete evidence of concealment, destruction of evidence, or failure to preserve documents and information, plaintiff is not entitled to access defendant's computers to confirm its suspicions. Should plaintiff obtain additional information through oral and written discovery to support its assertions, the Court will consider a renewed Motion, if supported.

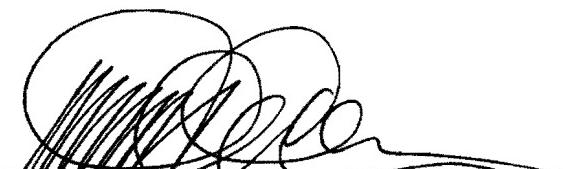
² Through discovery, plaintiff should consider inquiring about Brighton's document retention policies, and what steps the company took to preserve documents in this case.

1 **III. CONCLUSION**

2 For the reasons stated above, plaintiff's request to compel forensic examinations
3 of the computers used by certain representatives of the defendant [Doc. No. 31] is
4 **DENIED without prejudice.**

5 **IT IS SO ORDERED.**

6 Date: September 13, 2013

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10 KAREN S. CRAWFORD
11 United States Magistrate Judge
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